

House File 834 - Introduced

HOUSE FILE 834
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 14)

A BILL FOR

1 An Act relating to the creation, administration, and
2 termination of minor guardianships.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 232.3, subsection 1, Code 2021, is
2 amended to read as follows:

3 1. During the pendency of an action under this chapter, a
4 party to the action is estopped from litigating concurrently
5 the custody, guardianship, or placement of a child who is the
6 subject of the action, in a court other than the juvenile court
7 with jurisdiction of the pending action under this chapter. A
8 district judge, district associate judge, juvenile court judge,
9 magistrate, or judicial hospitalization referee, upon notice
10 of the pendency of an action under this chapter, shall not
11 issue an order, finding, or decision relating to the custody,
12 guardianship, or placement of the child who is the subject of
13 the action, under any law, including but not limited to chapter
14 232D, 598, or 598B, or 633.

15 Sec. 2. Section 232.3, Code 2021, is amended by adding the
16 following new subsection:

17 NEW SUBSECTION. 3. An action which is pending under chapter
18 232D prior to an action being brought under this chapter shall
19 be stayed by the court in the chapter 232D action unless the
20 court follows the procedures in subsection 2 and authorizes a
21 party to the action to litigate a specific issue under this
22 chapter.

23 Sec. 3. Section 232D.103, Code 2021, is amended to read as
24 follows:

25 **232D.103 Jurisdiction.**

26 The juvenile court has exclusive jurisdiction in a
27 guardianship proceeding concerning a minor who is alleged to be
28 in need of a guardianship and guardianships of minors.

29 Sec. 4. NEW SECTION. **232D.107 Confidentiality.**

30 Official juvenile court records in guardianship proceedings
31 shall be confidential and are not public records. Confidential
32 records may be inspected and their contents shall be disclosed
33 to the following without court order, provided that a person
34 who inspects or receives a confidential record under this
35 section shall not disclose the confidential record or its

1 contents unless required by law:

2 1. The judge and professional court staff.

3 2. The minor and the minor's counsel.

4 3. The minor's parent, guardian or custodian, court
5 visitor, and any counsel representing such person.

6 Sec. 5. Section 232D.301, subsection 2, paragraph d,
7 subparagraph (3), Code 2021, is amended to read as follows:

8 (3) Any adult who has had the primary care of the minor or
9 with whom the minor has lived for ~~at least~~ any time during the
10 six months prior to immediately preceding the filing of the
11 petition.

12 Sec. 6. Section 232D.301, subsection 4, Code 2021, is
13 amended to read as follows:

14 4. The petition shall state whether a limited guardianship
15 is appropriate and whether a conservatorship for the minor is
16 already in existence.

17 Sec. 7. Section 232D.302, subsection 2, Code 2021, is
18 amended to read as follows:

19 2. Notice shall be served upon the minor's known parents
20 listed in the petition in accordance with the rules of civil
21 procedure. If the parent has not filed a consent to the
22 appointment of a guardian, the notice shall inform any parent
23 named in the petition that the parent may be entitled to
24 representation under the conditions described in section
25 232D.304.

26 Sec. 8. Section 232D.305, subsection 1, Code 2021, is
27 amended to read as follows:

28 1. The court may appoint a court visitor for the minor. If
29 the court appoints a court visitor, the court shall not appoint
30 a guardian ad litem under the rules of civil procedure. A
31 person is qualified to serve as a court visitor if the court
32 determines the person has demonstrated sufficient knowledge of
33 guardianships to adequately perform the duties in subsection 3.

34 Sec. 9. Section 232D.305, subsection 3, paragraph b, Code
35 2021, is amended to read as follows:

1 ~~b. Explaining~~ Providing to the minor, if the minor's age
2 is appropriate, the substance of the petition, the purpose and
3 effect of the guardianship proceeding, information regarding
4 the rights of the minor at the hearing, and the general powers
5 and duties of a guardian.

6 Sec. 10. Section 232D.305, Code 2021, is amended by adding
7 the following new subsection:

8 NEW SUBSECTION. 6. The court may order a court visitor to
9 continue to serve if the court determines continued service
10 would be in the best interest of the minor. If the court
11 continues the service of the court visitor, the court may limit
12 the direct duties of the court visitor as the court deems
13 necessary, in which case the court visitor shall thereafter
14 continue to serve until discharged by the court. In the
15 event the court does not order the court visitor to continue,
16 the order appointing the guardian shall discharge the court
17 visitor.

18 Sec. 11. Section 232D.306, Code 2021, is amended by adding
19 the following new subsection:

20 NEW SUBSECTION. 4. A hearing on the petition may be
21 recorded if a court reporter is not used.

22 Sec. 12. Section 232D.307, subsections 1 and 2, Code 2021,
23 are amended to read as follows:

24 1. The court shall request criminal record checks and checks
25 of the child abuse, dependent adult abuse, and sex offender
26 registries in this state for all proposed guardians other than
27 financial institutions with Iowa trust powers unless a proposed
28 guardian has undergone the required background checks in this
29 section within the ~~twelve~~ six months prior to the filing of
30 a petition and the background check has been provided to the
31 court.

32 2. The court shall review the results of background checks
33 in determining the suitability of a proposed guardian for
34 appointment, and may, for good cause shown, share the results
35 of background checks with the proposed guardian's attorney, the

1 minor's attorney, and the proposed guardian.

2 Sec. 13. Section 232D.401, subsections 1 and 3, Code 2021,
3 are amended to read as follows:

4 1. The order by the court appointing a guardian for a minor
5 shall state the basis for the order and the date on which the
6 first reporting period for the guardianship will end.

7 3. An order by the court appointing a guardian for a minor
8 shall state the powers granted to the guardian. ~~Except as~~
9 ~~otherwise limited by court order, the~~ The court may grant the
10 guardian the following powers, which may be exercised without
11 ~~prior~~ further court approval:

12 a. Taking custody of the minor and establishing the minor's
13 permanent residence if otherwise consistent with the terms of
14 any order of competent jurisdiction relating to the custody,
15 placement, detention, or commitment of the minor within the
16 state.

17 b. Consenting to medical, dental, and other health care
18 treatment and services for the minor.

19 c. Providing or arranging for the provision of education
20 for the minor including but not limited to preschool education,
21 primary education and secondary education, special education
22 and related services, and vocational services.

23 d. Consenting to professional services for the minor to
24 ensure the safety and welfare of the minor.

25 e. Applying for and receiving funds and benefits payable
26 for the support of the minor if the minor does not have a
27 conservator. If the minor has a conservator, the guardian
28 shall notify the conservator prior to applying for funds or
29 benefits for the support of the minor.

30 f. Any other powers the court may specify.

31 Sec. 14. Section 232D.501, subsection 1, paragraph a, Code
32 2021, is amended by adding the following new subparagraph:

33 NEW SUBPARAGRAPH. (2A) The guardian's plan, if any, for
34 applying for and receiving funds and benefits payable for the
35 support of the minor.

1 Sec. 15. Section 232D.501, subsection 1, paragraph b, Code
2 2021, is amended by adding the following new subparagraphs:

3 NEW SUBPARAGRAPH. (11) The results of the guardian's
4 efforts to apply for funds or benefits for the minor and
5 an accounting for the use of such funds or benefits by the
6 guardian.

7 NEW SUBPARAGRAPH. (12) Any other information the guardian
8 deems necessary for the court to consider.

9 Sec. 16. Section 232D.501, subsections 2 and 4, Code 2021,
10 are amended to read as follows:

11 2. The judicial branch shall ~~prescribe~~ create the forms ~~for~~
12 ~~use which may be used~~ by the guardian in filing the reports
13 required by this section.

14 4. ~~Reports~~ All of the reports of the guardian shall be
15 reviewed and approved by the court.

16 Sec. 17. Section 232D.501, Code 2021, is amended by adding
17 the following new subsections:

18 NEW SUBSECTION. 5. A copy of the verified initial care
19 plan, if amended, and the verified annual report shall be
20 served, annually, on the protected person, the protected
21 person's attorney, if any, and court visitor, if any.

22 NEW SUBSECTION. 6. The court, for good cause, may extend
23 the deadline for filing required reports. Required reports of
24 a guardian which are not timely filed and which are delinquent,
25 and for which no extension for filing has been granted by the
26 court, shall be administered in the same manner as provided in
27 section 633.65.

28 Sec. 18. Section 232D.503, Code 2021, is amended by adding
29 the following new subsection:

30 NEW SUBSECTION. 6. If the court orders termination of a
31 guardianship established under this chapter and the guardian
32 has custody of the minor's assets, the court shall order
33 delivery of the minor's assets to the minor or a fiduciary
34 acting under one or more of the following accounts:

35 a. A conservatorship established for the minor pursuant to

1 protected person has lived for at least six months prior to the
2 filing of the petition. The bill requires the name and address
3 of any adult who has had the primary care of the protected
4 person or with whom the protected person had lived with at any
5 time during the six months prior to the filing of the petition.

6 The bill provides that in addition to stating in the
7 guardianship for the minor petition why a limited guardianship
8 is appropriate, the petition must also state whether a
9 conservatorship for the minor is already in place.

10 The bill provides that notice of a filed petition for
11 guardianship shall inform parents, who have not filed a
12 consent to the appointment of a guardian with the court that
13 the parents may be entitled to an attorney under current Code
14 section 232D.304.

15 The bill provides the qualifications and term of service
16 of a court visitor for the minor and that the court shall not
17 appoint a guardian ad litem if a court visitor is appointed.

18 The bill provides that a hearing on petition for
19 guardianship may be recorded if a court reporter is not used.

20 The bill provides that results of background checks of
21 the proposed guardian in the 6 months prior to filing of the
22 petition may be used; current law permits the use of background
23 checks within the prior 12 months. Results of the background
24 checks may be shared with good cause to the proposed guardian.

25 The bill provides that the order appointing a guardian for a
26 minor shall state the date that the first reporting period for
27 the guardianship will end.

28 The bill provides that the initial care plan shall include
29 the guardian's plan for funds and benefits payable for the
30 support of the minor and the verified annual report shall
31 include the results of the guardian's efforts to receive
32 funds or benefits and the account for the use of the funds or
33 benefits.

34 The bill provides that upon termination of guardianship
35 in which the guardian has custody of the minor's assets, the

1 assets must be returned to the minor or a fiduciary for the
2 minor for any of the following accounts: a conservatorship
3 established for the minor under Code chapter 633, a uniform
4 transfer to minors Act account, an educational savings plan
5 trust account, or an ABLE savings plan trust account.